Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Service Rules and Procedures to Govern the Use of Aeronautical Mobile Satellite Service Earth Stations in Frequency Bands Allocated to the Fixed Satellite Service	)	IB Docket No. 05-20

REPLY COMMENTS OF SITA

SITA (Societe Internationale de Telecommunications Aeronautiques) hereby replies to certain of the comments filed with regard to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking concerning the use of Ku-band aeronautical earth stations ("AES") onboard aircraft in flight.[1] SITA's interest is limited to one aspect of the *Notice* – the licensing scheme for AES that are deployed on foreign-registered aircraft that fly into or overfly the United States. As explained in greater detail below, SITA believes that requiring a separate FCC license, in addition to a radio license from the country of registry of the aircraft, would be clearly inconsistent with U.S. treaty obligations[2] and contrary to the

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[1] *Service Rules and Procedures to Govern the Use of Aeronautical Mobile Satellite Service Earth Stations in Frequency Bands Allocated to the Fixed Satellite Service*, IB Docket No. 05-20, 20 FCC Rcd 2906 (February 9, 2005), published in the *Federal Register* April 20, 2005 (hereafter cited as "*Notice*").

[2] Treaties carry the force of law. *See, e.g., Amendment of Part 2 1 of the*

public interest. Moreover, such an obligation would be incompatible with Commission precedent. Thus, SITA supports the comments of ARINC Incorporated ("ARINC") challenging such a duplicative licensing requirement (as well as the comments of The Boeing Company ("Boeing") contending that the Commission should not require a separate FCC license for foreign-registered aircraft), and disagrees with the comments of PanAmSat Corporation ("PanAmSat") supporting such an obligation.

SITA has long served global aviation and related industries. SITA is unique in being owned by the industry, as well as in aiming to provide innovative and community-focused solutions that offer the industry greater cost-effectiveness virtually anywhere in the world. SITA is the world's leading provider of global Information Technology and Telecommunications solutions to the air transport and related industries. With over 50 years of experience, SITA offers:

- A portfolio of information technology and telecommunication services specifically for the air transport industry.
- Global reach based on local presence, with services for over 600 members and around 1,800 customers in over 220 countries and territories.

Commission's Rules Regarding Implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979, 57 RR 2d 455 (November 27, 1984)("The United States Senate gave its advice and consent to ratify the treaty in December, 1982 and submitted it to the President who signed it on September 6, 1983. The treaty now has the force of law in the United States and we are obligated to adhere to its provisions.").

- Services to airlines, airports, aerospace companies - organizations involved in aircraft design and communication - as well as logistics and travel distribution organizations, international organizations and governments.

- Information Technology and Telecommunications solutions at virtually every step of the journey, from reservation, web booking and ticketing, through check-in, baggage tracking, immigration and border control solutions, to departure control, flight operations, in-flight communications, and much more.

Ku-band AES represent an additional means of providing services to aircraft in flight, and thus is of interest to SITA.

In their initial comments in this proceeding, both ARINC and Boeing urge the Commission to reject the *Notice*'s proposal at paragraph 61 to require foreign-registered aircraft to obtain an FCC license in order to operate in the United States. As ARINC's comments demonstrate, such a requirement would be inconsistent with the Chicago Convention and bad policy because it could trigger reciprocal obligations on U.S.-registered aircraft when they sought to operate in foreign territories.[3] Boeing likewise argues that restricting or prohibiting these services by U.S. satellite operators to aircraft using foreign-licensed aircraft in U.S. airspace would be contrary to the public interest,[4] although SITA disagrees with Boeing's

[3] ARINC Comments at pp. 18-22.

[4] Boeing Comments at p. 41.

alternative proposal to temporarily associate a foreign-registered aircraft with a U.S.-licensee when in the United States.[5]

The only commenter urging that the Commission implement a duplicative licensing obligation was PanAmSat,[6] but its terse discussion of this issue bases its support for the *Notice*'s proposal solely on the claim that the country of registry of the aircraft will not affect the potential to cause interference to other satellite systems. SITA does not contend that foreign-registered aircraft should be able to avoid the technical and operational requirements developed for this service – indeed, the Chicago Convention requires the aircraft operator to comply with the technical requirements (but not licensing obligations) of the country over which it is flying. Thus, PanAmSat's concerns about interference can be met by requiring that foreign-registered aircraft comply with the Commission-prescribed technical regulations without also requiring that they obtain a separate FCC license.

In the case of a foreign-registered aircraft, SITA believes that the Commission should recognize a license issued by the home country of the airplane without requiring a separate FCC license, although compliance with

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[5] Boeing suggests that such aircraft be "temporarily associated with and licensed to the U.S. AMSS licensee (or service vendor authorized by the operator) when the AES is operated within U.S. airspace." *Id.* As explained below, SITA does not believe that the Commission needs to create such a "temporary" FCC license, but instead can (and should) simply allow the foreign license to suffice as provided for under the Chicago Convention.

[6] PanAmSat Comments at p. 6.

the technical requirements developed in this proceeding would be obligatory. Such treatment derives from Articles 30 and 33 of the Chicago Convention and Commission Rules implementing that treaty.[7] It is also consistent with Article 18 of the ITU Radio Regulations. Requiring a license from the Commission in addition to one from the State of Registry of the aircraft would be inconsistent with the current treatment of the State of Registry as the regulatory body with ultimate sovereignty and control over the airplane.

Indeed, the *Notice* itself elsewhere acknowledges that sovereignty over the aircraft is determined by the country of registry, not the location of the airplane.[8] SITA urges the Commission to avoid any inconsistency in approach by adopting a licensing scheme that is harmonious with the United States' treaty obligations. Recognition of the authority of radio licensing by the country of registry of the aircraft addresses this concern and is consistent

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[7] Convention on International Civil Aviation, signed Dec. 7, 1944, Article 30. The Commission has applied this concept to its regulations concerning certain aviation services. Section 87.191(a) of the Commission's Rules provides:

> Aircraft of member States of the International Civil Aviation Organization may carry and operate radio transmitters in the United States airspace only if a license has been issued by the State in which the aircraft is registered and the flight crew is provided with a radio operator license of the proper class, issued or recognized by the State in which the aircraft is registered. The use of radio transmitters in the United States airspace must comply with these rules and regulations.

[8] *Cf., Notice* at ¶ 57 (the Commission's licensing obligation for U.S.-registered aircraft would apply "without concern for the location of the aircraft (*i.e.*, in U.S. airspace, over international waters, or in a foreign administration's airspace)").

with the Chicago Convention.

In the *Notice*, the Commission suggests, when considering Article 30 of the Chicago Convention, that the Convention does not explicitly prohibit the nation over which a foreign registered aircraft is flying from also issuing its own license for a transmitter on that aircraft.[9] This claim of the Commission, however, overlooks the provisions of Article 33 of the Convention, which (within the same Chapter of the Convention as Article 30) states that "licenses issued…by the contracting State in which the aircraft is registered shall be recognized as valid by the other contracting States…" The imposition by the Commission of a dual licensing system on foreign registered aircraft would be inconsistent with the terms of this treaty obligation. It would also be contrary to the clear intent of Resolution A29-19 of the ICAO General Assembly,[10] which expressly contemplates that the only licensing required to authorize passenger services using radio transmitting apparatus for non-safety related transmissions while an aircraft is in flight over a third country is a license issued by the State of Registry of the aircraft (or by the State of the operator where Article 83 bis of the Convention applies).

In attempting to justify a duplicative licensing burden, the

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[9] *Id.,* at fn. 156.

[10] Resolution A29-19 was adopted by the ICAO Assembly in the 28th (Extraordinary) Session of the Assembly held in Montreal October 22-26, 1990, and can be downloaded at: http://www.icao.int/icao/en/res/a29_19.htm.

Commission cites to Section 306 of the Communications Act, which indicates that Section 301 of the Act does not apply to "foreign ships," but does not mention foreign aircraft.[11] However, the fact that Section 306 does not mention foreign aircraft is hardly conclusive – that provision of the Act was adopted on June 19, 1934.[12] Commercial transatlantic flights did not occur until 1939,[13] so it is not surprising that Section 306 made no mention of foreign aircraft. On the other hand, the *Notice* fails to acknowledge Section 301(e) of the Communications Act, which specifies a licensing requirement "upon any vessel *or aircraft of the United States*" (emphasis added) but does not make any similar reference to foreign vessels or aircraft.[14]

Indeed, the Commission has otherwise acknowledged that foreign-registered aircraft need not obtain a separate FCC license to operate a radio station in the United States,[15] indicating that such foreign aircraft are not

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[11] *Notice* at n. 155.

[12] 48 Stat. 1081 (June 19, 1934).

[13] *See, e.g.,* U.S. Centennial of Flight Commission, The Beginnings of Commercial Transatlantic Services, available at: http://www.centennialofflight.gov/essay/Commercial_Aviation/atlantic_route/Tran4.htm.

[14] That provision was amended in 1982 to allow for recognition by the Commission of foreign licensing of radios on board U.S.-registered aircraft pursuant to Section 303(t). 96 Stat. 1091, 1093 (September 13, 1982).

[15] *See, Amendment of Part 87 of the Commission's Rules to Establish Technical Standards and Licensing Procedures for Aircraft Earth Stations*, 7 FCC Rcd 5895 (1992) at ¶ 31.

subject to the same licensing

requirements as domestic-registered aircraft:

> BT and ARINC/ATA point out that in accordance with the Convention of International and Civil Aviation, effective 4/4/47, Article 30, aircraft of foreign registry are not required to obtain a license from a country over which they fly -- in this case, the U.S. -- if they have a license from the country of registry. They recommend that Sections 87.51(a) and (b) of our Rules, 47 C.F.R. Secs. 87.51(a) and (b), be amended by adding "except as provided in Section 87.191." Sections 87.51(a) and (b) provide specifically for commissioning of U.S. flag aircraft earth stations. Section 87.191 of our Rules, 47 C.F.R. Sec. 87.191, provides for operation of foreign aircraft in U.S. airspace. These rules are clearly distinct in their focus -- it is not necessary to refer to foreign aircraft under rules for domestic aircraft.

In addition, Commission recognition of the aircraft radio licenses issued by the State of Registry would also be consistent with Commission recognition of foreign-licensed satellites, where such licensees can participate in processing rounds and add their satellites to the Permitted Space Station List, but need not obtain a separate FCC license.[16] Moreover, such treatment should ultimately benefit U.S. airlines insofar as the alternative – imposing an additional FCC licensing requirement on foreign aircraft – risks triggering a reciprocal obligation on U.S. carriers in order to allow them to provide these services when they fly over other countries. Indeed, that burden on U.S. airlines is likely to be greater in light of the number of countries the planes would overfly in providing overseas flights.

In sum, requiring a second license from the Commission would be contrary to the public interest because it would likely disadvantage U.S.

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[16] *E.g.,* 47 C.F.R. 25.137 (c)-(g).

airlines, and because it would denigrate the sanctity of international treaties and thus harm the long-term interests of the United States. For all of these reasons, SITA urges the Commission to reject a requirement that foreign-registered aircraft that have been licensed to operate Ku-band AES by the country of registry also obtain a license from the FCC to operate the AES in the United States. SITA believes that such a decision, as part of this proceeding, would well serve the public interest.

Respectfully submitted,

/s/

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